

Serial No.: 10/627,450
Filed: July 25, 2003

REMARKS

Applicant submits that Lowenstein does not constitute prior art. The present application was filed July 25, 2003 and claimed priority to a provisional patent application filed August 12, 2002. The publication date of Lowenstein is June 12, 2003. As Examiner stated in the office action, since the publication date of Lowenstein was later than Applicant's filing date and since Lowenstein is not a granted patent, Lowenstein can only qualify as prior art, if at all, under 35 U.S.C. section 102(e)(1). Applicant respectfully submits, however, that 35 U.S.C. section 102(e)(1) is inapplicable in this case.

As stated in the attached declaration of inventor Jason Mayeroff, and supported by the attached Exhibit A and the declaration of Peter Lyons, Applicant conceived and reduced to practice the claimed invention on or about May 1, 1999. The filing date of Lowenstein is December 11, 2001. 35 U.S.C. section 102(e)(1) states that a granted patent only acts as prior art if it is "filed in the United States *before* the invention thereof by the applicant for patent." 35 U.S.C. section 102(e)(1) (emphasis added). In this case, Lowenstein was filed approximately thirty-one months *after* the conception and reduction to practice of the invention by Applicant. Because Lowenstein was filed after Applicant's date of invention, and because Lowenstein does not claim the same patentable invention as Applicant, Applicant respectfully submits that Lowenstein is not prior art as Applicant has sworn behind Lowenstein and effectively removed it as a prior art reference.

Since Examiner has relied on Lowenstein alone or in combination with other references in all Examiner's rejections of Applicant's claims, Applicant respectfully submits that with

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Lowenstein removed as a prior art reference, Applicant's claims are neither anticipated nor rendered obvious by the remaining cited references.

Conclusion

For the reasons advanced above, all pending claims are now believed to be in condition for allowance. Should Examiner believe that a telephone interview would advance the prosecution of this application, the undersigned would invite and request such an interview.

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Respectfully submitted,
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